INTERAGENCY AGREEMENT
BETWEEN
THE FOOD AND DRUG ADMINISTRATION
AND
THE U.S. ARMY CORPS OF ENGINEERS

ARTICLE I - PURPOSE AND AUTHORITY

This Interagency Agreement ("IAG") is entered into by and between the U.S. Army Corps of Engineers ("USACE") and the Food and Drug Administration ("FDA") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of USACE real estate acquisition services and facility design services. This IAG is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535) and Public Law 103-330, 30 Sep 94.

ARTICLE II - SCOPE

Goods and services which the USACE may provide under this IAG include the following: real estate acquisition; facility planning, programming, and design services either by contract or with USACE resources; and other services as may be mutually agreed.

The initial effort generally involves all services necessary to purchase land, and award and manage an architectural-engineering (A-E) design contract for the relocation of the FDA's District Laboratory currently located at 1521 West Pico Boulevard, Los Angeles, California. See Appendix A for details of this initial effort.

Aside from the work and funding described in Appendix A, other related goods or services may be provided as agreed upon in the future between USACE and FDA.

Nothing in this IAG shall be construed to require the FDA to use the USACE or to require the USACE to provide any goods or services to the FDA, except as may be set forth in Work Orders ("WO(s)"). Said WOs to be used for any work in addition to that work set forth in Appendix A, which represents the initial work.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the USACE and the FDA, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this IAG. Additional representatives may also be appointed to serve as points of contact on WOs. ← NWK

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ARTICLE IV - WORK ORDERS

In response to requests from the FDA for USACE assistance under this IAG, the USACE and the FDA shall conclude mutually agreed upon written WOs, which shall include the following:

-a detailed scope of work statement;
-schedules;
-funding arrangements, including whether payment shall be in advance or by reimbursement;
-the amount of funds required and available to accomplish the scope of work as stated above; and
-the FDA's fund citation and the date upon which the cited funds expire for obligation purposes.

The following must be addressed in each WO, or in this IAG:

-identification of individual project managers;
-identification of types of contracts to be used (if known);
-types and frequencies of reports;
-identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits;
-procedures for amending or modifying the WO; and
-such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

After the initial effort, as set forth in Appendix A, goods or services shall be provided under this IAG only after an appropriate WO has been signed by a representative of each party authorized to execute that WO. Upon signature by each parties' representative, a WO shall constitute a valid Economy in Government Act order. In the case of conflict between this IAG and a WO, this IAG shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the U.S. Army Corps of Engineers (USACE)

The USACE shall provide the FDA with goods or services in accordance with the purpose, terms, and conditions of this IAG and with specific requirements set forth in WOs and implementing arrangements.

The USACE shall identify authorized USACE representatives to sign WOs.

The USACE shall use its best efforts to provide goods or services either by contract or by in-house effort.

The USACE shall provide detailed periodic progress, financial and other reports to the FDA as agreed to in the WO. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

The USACE shall inform the FDA of all contracts entered into under each WO.

B. Responsibilities of the Food and Drug Administration (FDA)

The FDA shall certify, prior to the execution of each WO under this IAG, that the WO complies with the requirements of the Economy in Government Act.

The FDA shall pay all costs associated with the USACE's provisions of goods or services under this IAG and shall certify, at the time of signature of a WO, the availability of funds necessary to accomplish that WO.

The FDA shall ensure that only authorized FDA contracting officers sign WOs.

The FDA shall develop draft WOs to include scope of work statements.

ARTICLE VI - FUNDING

The FDA shall pay all costs associated with the USACE's provision of goods or services under this IAG. For WOs for work estimated to cost more than $250,000 total in contracts and in-house services or $50,000 in contracts, the FDA shall provide the necessary funds in advance. For WOs for work valued at less than these amounts, the FDA may reimburse the USACE for the goods or services. For these lesser requirements, the USACE shall bill the FDA monthly for costs incurred, using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds, and the FDA shall reimburse the USACE within 30 days of receipt of an SF 1080.

If the USACE forecasts its actual costs under a WO to exceed the amount of funds available under that WO, it shall promptly notify the FDA of the amount of additional funds necessary to complete the work under that WO. The FDA shall either provide the additional funds to the USACE, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that WO.

Within 90 days of completing the work under a WO, the USACE shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the USACE shall return to the FDA any funds advanced in excess of the actual costs as then known, or the FDA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the FDA's duty in

accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This IAG and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the USACE shall be governed by Department of the Army policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the USACE shall be resolved in accordance with Federal law and the terms of the individual contract. The USACE shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The USACE shall be responsible for handling all litigation involving disputes and appeals arising under or relating to contracts awarded by the USACE, and for coordinating with the Department of Justice as appropriate. The USACE shall notify the FDA of any such litigation and afford the FDA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the FDA and the USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The USACE's preferred method of resolution is partnering. Within 30 days of the effective date of this IAG, the USACE and the FDA will meet to create and sign a partnering agreement. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

ARTICLE X - LIABILITY

If liability of any kind is imposed on the United States relating to the USACE's provision of goods or services under this IAG, the USACE will accept accountability for its actions, but the FDA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the FDA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the FDA. The USACE may provide, upon request, any assistance necessary to support the FDA's justification or explanations of the FDA's programs conducted under this IAG. In general, the FDA is responsible for all public information. The USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The FDA or the USACE shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to WOs under this IAG.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This IAG shall not affect any pre-existing or independent relationships or obligations between the FDA and the USACE.

B. Survival

The provisions of this IAG which require performance after the expiration or termination of this IAG shall remain in force notwithstanding the expiration or termination of this IAG.

C. Severability

If any provision of this IAG is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This IAG may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this IAG by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the FDA shall continue to be responsible for all costs incurred by the USACE under this IAG and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This IAG shall become effective when signed by both the FDA and the USACE.

U.S. Food and Drug Administration

Robert J. Byrd

Robert J. Byrd
Associate Commissioner for
Management

DATE: 4.5.95

U.S. Army Corps of Engineers

Pat M. Stevens IV
Major General, U.S. Army
Director of Military Programs

DATE:

APPENDIX A -- INITIAL WORK EFFORT FOR THE FOOD AND DRUG ADMINISTRATION (Amended 18 April 1995)

The initial effort generally involves all services necessary to purchase land, and award and manage an architectural-engineering (A-E) design contract for the relocation of the FDA's District Laboratory currently located at 1521 West Pico Boulevard, Los Angeles, California.

The USACE shall: perform, or contract for performance, all necessary environmental studies and reports, land appraisals, and other such ancillary services needed for the purchase of the selected site; work with FDA technical and program personnel in the development and/or finalization of a program of requirements; and award and manage an architectural-engineering (A-E) design contract.

Article VI of the IAG indicates that the FDA shall pay for all costs associated with the USACE's provision of goods or services under the IAG.

The USACE in-house effort for each general category as a percentage of the total USACE in-house effort is estimated to be:

Real Estate Acquisition	-	5% (not including environmental studies/reports
A-E Contracting	-	5%
Programming	-	5%
Concept Design	-	35%
Final Design	-	50%
TOTAL	-	100%

Pending the selection of a specific building site and the establishment of a firm Scope of Work (i.e. Program of Requirements) the total cost of USACE's services cannot be accurately estimated.

Disbursement of funds will occur over the duration of the site acquisition/design process.

A minimum of one or maximum of two FDA technical personnel shall participate as voting members on the evaluation board for selection of the A-E design contractor. FDA's Office of Contracts and Grants Management shall be the contact point for, and coordinate all efforts of, FDA personnel. FDA's Office of Contracts and Grants Management shall monitor all work performed by the USACE for FDA and shall provide documentation produced to date relative to the selection of a site.

Final approval of the selected site, site development plan, and approval of final design shall vest with the FDA.

The sum ~~certain~~ of *approximately* $9.8 million is hereby tendered to the USACE for

expenditure on the work identified above and as approved by the FDA. All unexpended funds, minus the agreed upon costs for the USACE, will be returned to the FDA.

Funding citation for this initial effort is as follows:

Agency Bureau Code:	7506
Appropriation Symbol:	75X0603
Location Code:	24200K40
O.C. Code:	O.C. 25.72
Accounting Data:	5-6997264 B2Y001

The Principal Representative for USACE is James V. Allred, R.A., Chief, Medical Facilities Office, telephone (202)761-0424.

The Principal Representative for FDA is Patricia G. Calhoun, Contracting Officer, telephone (301)443-4460.